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Cc:

Subject: RE: ET advice requested by Exam

Interesting case. I agree with your instinct that the business income should have been reported on a Schedule C. You ask whether a Schedule C can be jointly operated. An unincorporated business jointly owned by a married couple is generally classified as a partnership for federal tax purposes. However, for tax years beginning after December 31, 2006, the Small Business and Work Opportunity Tax Act of 2007 (Public Law 110-28) provides that a "qualified joint venture", whose only members are a husband and a wife filing a joint return, can elect NOT to be treated as a partnership for Federal tax purposes. Both spouses can still get social security credit if they elect for the business to be treated as a qualified joint venture. Spouses make the election on a jointly filed Form 1040 by dividing all items of income, gain, loss, deduction, and credit between them in accordance with each spouse's respective interest in the joint venture, and each spouse filing with the Form 1040 a separate Schedule C. The taxpayers probably should have done this. I agree that the only way they would owe FICA is if one spouse is the employee of the other spouse, and then only the employee spouse's wages would be subject to FICA.